GOPI CHAND

v.

THE DELHI ADMINISTRATION

1959

January 20.

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR, K. N. WANCHOO and HIDAYATULLAH, JJ.)

Criminal Trial—Temporary enactment—Provision for trial of specified offences under summons procedure in notified areas—Constitutional validity—Applicability to proceedings pending on expiry of enactment—Absence of saving provision—East Punjab Public Safety Act, 1949 (Punj. 5 of 1949), ss. 36(1), 20—Constitution of India, Art. 14—General Clauses Act, 1879 (10 of 1879), s. 6.

Section 36(1) of the East Punjab Public Safety Act, 1949, (Punj. 5 of 1949), which was passed in the wake of the partition disturbances in India with a view to ensure public safety and the maintenance of public order, provided that offences mentioned therein and committed in the area declared to be dangerously disturbed under s. 20 of the Act, should be tried under the summons procedure prescribed by Ch. XX of the Code of Criminal Procedure. By the first notification issued under s. 20 of the Act, the whole of the Province of Delhi was declared to be a dangerously disturbed area; subsequently the second notification purported to cancel the first. The third notification then sought to modify the second by inserting into it the words "except as respect things done or omitted to be done before this notification". The fourth and last notification issued under s. 36(1) of the Act sought to save proceedings thereunder pending after the cancellation of the first notification. The appellant who was put up for trial in three cases for offences ordinarily triable under the warrant procedure, was tried under the summons procedure according to s. 36(1) of the Act and the first notification and the trials were continued even after the expiry of the Act in respect of substantial parts of them under the same procedure and ended in his conviction which was affirmed by the High Court in appeal. The Act was a temporary Act and contained no provision saving pending proceedings. It was contended on behalf of the appellant that the first part of s. 36(1) of the Act in treating the disturbed areas as a class by themselves and providing a uniform procedure for the trial of specified offences violated Art. 14 of the Constitution and that the continuance of the trials under the summons procedure even after the expiry of the Act was invalid.

Held, that the two tests of the validity of the classification made by the Legislature were, (1) that the classification must be based on an intelligible differentia and (2) that this differentia must be reasonably connected with the object of the legislation. Thus tested, there could be no doubt, in the present case, that the classification on a geographical basis made by the impugned

1959

Gopi Chand
v.
The Delhi Administration

Act between areas that were dangerously disturbed and other areas, in the interest of speedy trial of offences, was perfectly justified.

Ram Krishna Dalmia v. *Justice Tendolkar*, [1959] S.C.R. 279, relied on.

Lachmandas Kewalram Ahuja v. *The State of Bombay*, [1952] S.C.R. 710, held inapplicable.

But since the impugned Act was a temporary Act and contained no appropriate provision saving the summons procedure prescribed by it, that procedure could not, on the expiry of the Act, apply to the cases pending against the appellant.

Krishnan v. *The State of Madras*, [1951] S.C.R. 621, relied on.

Wicks v. *Director of Public Prosecutions*, [1947] A.C. 362, referred to.

The third and the fourth notifications, obviously intended to cure the absence of a saving provision in the Act, were wholly outside the authority conferred on the delegate by s. 20 or s. 36(1) of the Act and must be held to be invalid. With the issue of the second notification, therefore, the entire province of Delhi ceased to be a dangerously disturbed area.

It was erroneous to apply by analogy the provisions of s. 6 of the General Clauses Act to cases governed by a temporary Act, such as the one in question, which did not contain the appropriate saving provision and contend that since the trials had commenced validly, their continuance under the same procedure even after the declaration had ceased to operate and subsequent orders of conviction and sentence passed therein were valid as well.

Srinivasachari v. *The Queen*, (1883) I.L.R. 6 Mad. 336, *Mukund* v. *Ladu*, (1901) 3 Bom. L.R. 584 and *Gardner* v. *Lucas*, (1878) 3 A.C. 582, held inapplicable.

Ram Singh v. *The Crown*, A.I.R. 1950 East Punjab 25, disapproved.

Syed Qasim Razvi v. *The State of Hyderabad*, [1953] S.C.R. 589, referred to and distinguished.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 25-27 of 1955.

Appeals from the judgments and order dated February 1, 1955, of the Punjab High Court (Circuit Bench), Delhi in Cr. Appeals Nos. 5-D, 6-D and 13-D of 1952, arising out of the judgments and orders dated December 22, 1951, of the 1st Class Magistrate, New Delhi in Criminal Cases Nos. 220/2, 221/2 and 223/2 of 1949.

Ram Lal Anand and *S. N. Anand*, for the appellant.

H. J. Umrigar and *T. M. Sen*, for the respondent.

1959. January 20. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—These three appeals have been filed with certificates granted by the High Court of Punjab under Art. 134(1) (c) of the Constitution and they arise from three criminal cases filed against the appellant. The appellant Gopi Chand was the chief cashier, and Hukam Chand was an assistant cashier, in the United Commercial Bank Ltd., New Delhi. They were charged with the commission of offences under s. 409 in three separate cases. In the first case No. 223/2 of 1949, the prosecution case was that on or about April 8, 1948, both had agreed to commit, or cause to be committed, criminal breach of trust in respect of the funds of the Bank where they were employed; and in pursuance of the said agreement they had committed criminal breach of trust in respect of the total amount of Rs. 1,65,000. They were thus charged under ss. 408, 409 and 120B of the Indian Penal Code. The appellant was convicted of the offence under s. 409 read with s. 120 and sentenced to rigorous imprisonment for seven years. Against this order of conviction and sentence he preferred an appeal to the High Court of Punjab (No. 5-D of 1952). The High Court confirmed his conviction but altered the sentence imposed on him by directing that he should suffer four year's rigorous imprisonment and pay a fine of Rs. 10,000 or in default suffer rigorous imprisonment for fifteen months. The order of conviction and sentence thus passed gives rise to Criminal Appeal No. 25 of 1955 in this Court.

Gajendragadkar J.

In the second case (No. 221/2 of 1949) the appellant was charged with having committed an offence under ss. 408 and 409 of the Indian Penal Code in that he had committed criminal breach of trust in respect of an amount of Rs. 23,772-8-6. The trial magistrate convicted the appellant of the said offence and sentenced him to suffer rigorous imprisonment for five years.

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

On appeal (No. 6-D of 1952) the order of conviction was confirmed but the sentence imposed on him was reduced to three years' rigorous imprisonment. This order has given rise to Criminal Appeal No. 26 of 1955 in this Court.

In the third case (No. 220/2 of 1949) the appellant, Hukam Chand and Ganga Dayal were charged with having committed an offence under s. 409/408 read with s. 120B of the Indian Penal Code in that all of them had agreed to commit criminal breach of trust in respect of the sum of Rs. 10,000 belonging to the Bank and that in pursuance of the said agreement they had committed the criminal breach of trust in respect of the said amount. The trial magistrate convicted the appellant of the offence charged and sentenced him to four year's rigorous imprisonment. On appeal (No. 13-D of 1952) the High Court confirmed the conviction but reduced the sentence to two years' rigorous imprisonment. From this order arises Criminal Appeal No. 27 of 1955 in this Court.

The appellant has obtained a certificate from the High Court under Art. 134(1) (c) of the Constitution because he seeks to challenge the validity of the order of conviction and sentence passed against him in the three cases on the ground that the proceedings in all the said cases are void. He contends that, whereas the charges framed against him had to be tried according to the procedure prescribed for the trial of warrant cases, the learned trial magistrate tried all the cases according to the procedure prescribed for the trial of summons cases and that makes void all the proceedings including the final orders of conviction and the sentences.

The point arises in this way. The East Punjab Public Safety Act, 1949 (Punj. 5 of 1949), hereinafter called the Act, which came into force on March 29, 1949, was passed to provide for special measures to ensure public safety and maintenance of public order. It is common ground that the offences with which the appellant was charged would normally have to be tried under the procedure prescribed by ch. XXI of the Code of Criminal Procedure for the trial of warrant

cases but in fact they have been tried under the procedure prescribed by ch. XX for the trial of summons cases. The summons procedure differs from the warrant procedure in some material points. Under the former procedure a charge is not to be framed while under the latter a charge has to be framed under s. 254 of the Code. Similarly an accused person gets only one chance of cross-examining the prosecution witnesses under the summons procedure whereas under the warrant procedure he is entitled to cross-examine the said witnesses twice, once before the framing of the charge and again after the charge is framed. The appellant concedes that the cases against him were tried according to the summons procedure by reason of s. 36 of the Act and the notification issued under it; but he contends that the relevant provisions of the Act are *ultra vires* and he alternatively argues that the proceedings in respect of a substantial part were continued under the summons procedure even after the Act had expired and the relevant notifications had ceased to be operative. That is how the validity of the trial and of the orders of conviction and sentence is challenged by the appellant.

It would be relevant at this stage to refer to the material provisions of the Act and the relevant notifications issued under it. The Act came into force on March 29, 1949. It was passed to provide for special measures to ensure public safety and maintenance of public order. Section 36 of the Act prescribes the procedure for the trial of specified offences; under sub-s. (1) all offences under this Act or under any other law for the time being in force in a dangerously disturbed area, and in any other area all offences under this Act and any other offence under any other law which the Provincial Government may certify to be triable under this Act, shall be tried by the courts according to the procedure prescribed by the Code, provided that in all cases the procedure prescribed for the trial of summons cases by ch. XX of the Code shall be adopted, subject, in the case of summary trials, to the provisions of ss. 263 to 265 of the Code. For the avoidance of doubt sub-s. (2) provided that

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

the provisions of sub-s. (1) shall apply to the trial of offences mentioned therein committed before the commencement of this Act, and in a dangerously disturbed area committed before the date of the notification under s. 20, in respect of it. Under s. 20 the Provincial Government is authorised by notification to declare that the whole or any part of the Province as may be specified in the notification to be a dangerously disturbed area.

Four notifications were issued under s. 20. By the first notification issued on July 8, 1949, the whole of the Province of Delhi was declared to be a dangerously disturbed area by the competent authority. It appears that on September 28, 1950, the said authority issued the second notification cancelling the first notification with effect from October 1, 1950. This notification was followed by the third notification on October 6, 1950, which purported to modify it by inserting the words " except as respect things done or omitted to be done before the date of this notification " after the words " with effect from October 1, 1950 "; in other words, this notification purported to introduce an exception to the cancellation of the first notification caused by the second, and in effect it purported to treat the Province of Delhi as a dangerously disturbed area in respect of things done or omitted to be done before the date of the said notification. The last notification was issued on April 7, 1951. This notification was issued by the Chief Commissioner of Delhi in exercise of the powers conferred by sub-s. (1) of s. 36 of the Act, and by it he certified as being triable under the said Act in any area within the State of Delhi not being a dangerously disturbed area the following offences, viz., any offence under any law other than the aforesaid Act of which cognisance had been taken by any magistrate in Delhi before October 1, 1950, and the trial of it according to the procedure prescribed in ch. 4 of the said Act was pending in any court immediately before the said date and had not concluded before the date of the certificate issued by the notification.

Let us now mention the facts about the trial of the

three cases against the appellant about which there is no dispute. The First Information Report was filed against the appellant on June 30, 1948. The trial commenced on July 18, 1949, and it was conducted according to the procedure prescribed by ch. XX of the Code. Some prosecution witnesses were examined and cross-examined before January 26, 1950, and the whole of the prosecution evidence was recorded before August 14, 1951. The evidence for the defence was recorded up to November 14, 1951, and the learned magistrate pronounced his judgments in all the cases on December 22, 1951.

For the appellant, Mr. Ram Lal Anand contends that s. 36(1) of the Act is *ultra vires* because it violates the fundamental right of equality before law guaranteed by Art. 14 of the Constitution. His argument is that since offences charged against the appellant were triable under the warrant procedure under the Code, the adoption of summons procedure which s. 36(1) authorised amounts to discrimination and thereby violates Art. 14. It is the first part of sub-s. (1) of s. 36 which is impugned by the appellant. The effect of the impugned provisions is that, after an area is declared to be dangerously disturbed, offences specified in it would be tried according to the summons procedure even though they have ordinarily to be tried according to warrant procedure. The question is whether in treating the dangerously disturbed areas as a class by themselves and in providing for one uniform procedure for the trial of all the specified offences in such areas the impugned provision has violated Art. 14.

The point about the construction of Art. 14 has come before this Court on numerous occasions, and it has been consistently held that Art. 14 does not forbid reasonable classifications for the purpose of legislation. In order that any classification made by the Legislature can be held to be permissible or legitimate two tests have to be satisfied. The classification must be based on an intelligible differentia which distinguishes persons or things grouped together in one class from others left out of it, and the differentia must have a

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

reasonable or rational nexus with the object sought to be achieved by the said impugned provision. It is true that, in the application of these tests uniform approach might not always have been adopted, or, in dealing with the relevant considerations emphasis might have shifted; but the validity of the two tests that have to be applied in determining the vires of the impugned statute under Art. 14 cannot be doubted.

In the present case the classification has obviously been made on a territorial or geographical basis. The Legislature thought it expedient to provide for the speedy trial of the specified offences in areas which were notified to be dangerously disturbed areas; and for this purpose the areas in the State have been put in two categories, those that are dangerously disturbed and others. Can it be said that this classification is not founded on an intelligible differentia? In dealing with this question it would be relevant to recall the tragedy of the holocaust and the savage butchery and destruction of property which afflicted several parts of the border State of Punjab in the wake of the partition of India. Faced with the unprecedented problem presented by this tragedy, the Legislature thought that the dangerously disturbed areas had to be dealt with on a special footing; and on this basis it provided inter alia for the trial of the specified offences in a particular manner. That obviously is the genesis of the impugned statute. That being the position, it is impossible to hold that the classification between dangerously disturbed areas of the State on the one hand and the non-disturbed areas on the other was not rational or that it was not based on an intelligible differentia. Then again, the object of the Act was obviously to ensure public safety and maintenance of public order; and there can be no doubt that the speedy trial of the specified offences had an intimate rational relation or nexus with the achievement of the said object. There is no doubt that the procedure prescribed for the trial of summons cases is simpler, shorter and speedier; and so, when the dangerously disturbed areas were facing the problem of unusual civil commotion and strife, the Legislature was justified

in enacting the first part of s. 36 so that the cases against persons charged with the commission of the specified offences could be speedily tried and disposed of. We are, therefore, satisfied that the challenge to the vires of the first part of sub-s. (1) of s. 36 cannot be sustained. In this connection we may refer to the recent decision of this Court in *Ram Krishna Dalmia* v. *Justice Tendolkar* (1). The judgment in that case has considered the previous decisions of this Court on Art. 14, has classified and explained them, and has enumerated the principles deducible from them. The application of the principles there deduced clearly supports the validity of the impugned provisions.

It is, however, urged by Mr. Ram Lal Anand that the decision of this Court in *Lachmandas Kewalram Ahuja* v. *The State of Bombay* (2) supports his contention that s. 36(1) is invalid. We are not impressed by this argument. In *Ahuja's case* (2) the objects of the impugned Act were the expediency of consolidating and amending the law relating to the security of the State, maintenance of public order and maintenance of supplies and services essential to the community in the State of Bombay. These considerations applied equally to both categories of cases, those referred to the Special Judge and those not so referred; and so, on the date when the Constitution came into force, the classification on which s. 12 was based became fanciful and without any rational basis at all. That is why, according to the majority decision s. 12 contravened Art. 14 of the Constitution and as such was *ultra vires*.

It is difficult to see how this decision can help the appellant's case. The impugned provision in the present case makes no distinction between one class of cases and another, much less between cases directed to be tried according to the summons procedure before January 26, 1950, and those not so directed. The summons procedure is made applicable to all offences under the Act or under any other law for the time being in force; in other words, all criminal offences are ordered to be tried according to the summons procedure in the dangerously disturbed areas. That being

(1) A.I.R. 1958 S.C. 538. (2) [1952] S.C.R. 710, 731.

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

so, we do not think that the decision in *Ahuja's case* (1) has any application at all. Thus we feel no difficulty in holding that the impugned provision contained in the first part of s. 36(1) is constitutional and valid.

Then it is urged that the Act which came into force on March 29, 1949, was due to expire and did expire on August 14, 1951, and so the proceedings taken against the appellant under the summons procedure after the expiration of the temporary Act were invaid. It is argued that, in dealing with this point, it would not be permissible to invoke the provisions of s. 6 of the General Clauses Act because the said section deals with the effect of repeal of permanent statutes. This argument no doubt is well-founded. As Craies has observed, "as a general rule, unless it contains some special provisions to the contrary, after a temporary Act has expired no proceedings can be taken upon it and it ceases to have any further effect" (2). This principle has been accepted by this Court in *Krishnan* v. *The State of Madras* (3). "The general rule in regard to a temporary statute is", observed Patanjali Sastri J., "that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires". It is true that the Legislature can and often enough does avoid such an anomalous consequence by enacting in the temporary statute a saving provision, and the effect of such a saving provision is in some respects similar to the effect of the provisions of s. 6 of the General Clauses Act. As an illustration, we may refer to the decision in *Wicks* v. *Director of Public Prosecutions* (4). In that case an offence against Defence (General) Regulations made under the Emergency Powers (Defence) Act, 1939, was committed during the currency of the Act and the offender was prosecuted and convicted after the expiry of the Act. The contention raised by the offender that his prosecution and conviction were invalid because, at the relevant time, the temporary

(1) [1952] S.C.R. 710, 731.
(2) Craies on "Statute Law", 5th Ed., p. 377.
(3) [1951] S.C.R. 621, 628.
(4) [1947] A.C. 362.

Act had expired was rejected in view of the provisions of s. 11, sub-s. 3, of the Act. This sub-section had provided that the expiry of the Act shall not affect the operation thereof as respects things previously done or omitted to be done. The House of Lords agreed with the view expressed by the Court of Criminal Appeal and held that it was clear that Parliament did not intend sub-s. 3 to expire with the rest of the Act and that its presence in the statute is a provision which preserved the right to prosecute after the date of its expiry. Since the impugned Act does not contain an appropriate saving section the appellant would be entitled to contend that, after the expiration of the Act, the procedure laid down in it could no longer be invoked in the cases then pending against the appellant. We would like to add that, in the present case, we are not called upon to consider whether offences created by a temporary statute cease to be punishable on its expiration.

For the respondent, Mr. Umrigar, however, contends that the appellant is wrong in assuming that the Act in fact expired on August 14, 1951. He has invited our attention to the provisions of Act No. I of 1951 by which the President extended some of the provisions of the earlier temporary Act in exercise of the powers conferred by s. 3 of the Punjab State Legislature (Delegation of Powers) Act, 1951 (46 of 1951), The provisions of that Act extended to the whole of the State of Punjab and came into force on September 13, 1951. Mr. Umrigar relied on s. 16 of Act 46 of 1951 which repealed the East Punjab Public Safety Act, 1949 (Punj. 5 of 1949) and the East Punjab Safety (Amendment) Ordinance, 1951 (5 of 1951) but provided that notwithstanding such repeal any order made, notification or direction issued, appointment made or action taken under the said Act and in force immediately before the commencement of this Act shall, in so far as it is not inconsistent therewith, continue in force and be deemed to have been made, issued or taken under the corresponding provisions of this Act. It must, however, be pointed out that this

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

Act does not continue the material provisions of the impugned Act such as s. 20 and s. 36; and so s. 16 cannot be invoked for the purpose of validating the continuation of the subsequent proceedings against the appellant in the cases then pending against him.

Besides, it is necessary to recall that s. 36(1) of the Act prescribed the application of the summons procedure in the trial of specified offences only in dangerously disturbed areas; and so, unless it is shown that the relevant area could be treated as a dangerously disturbed area at the material time, s. 36(1) would be inapplicable. In other words, the adoption of the summons procedure would be justified only so long as the area in question could be validly treated as a dangerously disturbed area and it is therefore pertinent to enquire whether at the relevant time the area in question was duly and validly notified to be a dangerously disturbed area.

We have already referred to the four notifications issued by the competent authority. The second notification purported to cancel with effect from October 1, 1950, the first notification which had declared the whole of the Province of Delhi as a dangerously disturbed area. A week thereafter, the third notification sought to introduce an exception to the cancellation as notified by the second notification. Apart from the question as to whether, after the lapse of a week, it was competent to the authority to modify the second notification, it is difficult to understand how it was within the jurisdiction of the notifying authority to say that the whole of the Province of Delhi had ceased to be a dangerously disturbed area "except as respects things done or omitted to be done before the date of this notification". Section 20 of the Act under which this notification has been issued authorised the Provincial Government to declare that the whole or any part of the Province was a dangerously disturbed area. The notification could declare either the whole or a part of the Province as a dangerously disturbed area; but s. 20 does not empower the notifying authority to treat any area as being dangerously disturbed in respect of certain things and not dangerously disturbed

in regard to others. Authority to declare areas as dangerously disturbed has no doubt been validly delegated to the Provincial Government; but no authority has been conferred on the delegate to treat any area as disturbed for certain things and not disturbed for others. We have, therefore, no doubt that in introducing the exception to the cancellation effected by the second notification the third notification has gone outside the authority conferred by s. 20 and is clearly invalid. If that be so, it must be held that the whole of the Province of Delhi ceased to be a dangerously disturbed area as from October, 1, 1950.

It was probably realised that the third notification would be invalid and hence the fourth notification was issued on April 7, 1951. This purports to be a certificate issued by the competent authority under the second part of s. 36, sub-s. (1). This certificate seeks to achieve the same result by declaring that though the State of Delhi was not a dangerously disturbed area, the offences specified in the notification would nevertheless continue to be tried according to the summons procedure.

This notification is clearly not authorised by the powers conferred by the second part of s. 36, sub-s. (1). What the Provincial Government is authorised to do by the second part of s. 36(1) is to direct that in areas other than those which are dangerously disturbed all offences under the Act and any other offence under any other law should be tried according to the summons procedure. It is clear that the notification which the Provincial Government is authorised to issue in this behalf must relate to all offences under the Act and any other offence under any other law. In other words, it is the offences indicated which can be ordered to be tried under the summons procedure by the notification issued by the Provincial Government. The Provincial Government is not authorised to issue a notification in regard to the trial of any specified case or cases; and since it is clear that the notification in question covers only pending cases and has no reference to offences or class of offences under the Indian Penal Code, it is outside the

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

authority conferred by the second part of s. 36(1). It is obvious that the third and the fourth notifications attempted to cure the anomaly which it was apprehended would follow in regard to pending cases in the absence of a saving section in the Act. If through inadvertence or otherwise the Act did not contain an appropriate saving section, the defect could not be cured by the notifications issued either under s. 20 or under s. 36(1) of the Act. In issuing the said notifications the competent authority was taking upon itself the functions of the Legislature and that clearly was outside its authority as a delegate either under s. 20 or under s. 36(1) of the Act.

Mr. Umrigar, then, argues that the competent authority was entitled to modify the notification issued by it because the power to issue a notification must also involve the power either to cancel, vary or modify the same; and in support of this argument Mr. Umrigar relies on the provisions of s. 19 of the Punjab General Clauses Act, 1898 (Punj. 1 of 1898) which in substance corresponds to cl. 21 of the General Clauses Act, 1897 (10 of 1897). In our opinion, this argument is not well-founded. Section 19 of the Punjab General Clauses Act, like s. 21 of the General Clauses Act, embodies a rule of construction, the nature and extent of the application of which must inevitably be governed by the relevant provisions of the statute which confers the power to issue the notification. The power to cancel the notification can be easily conceded to the competent authority and so also the power to modify or vary it be likewise conceded; but the said power must inevitably be exercised within the limits prescribed by the provision conferring the said power. Now s. 20 empowers the Provincial Government to declare the whole or any part of the Province to be a dangerously disturbed area; and if a notification is issued in respect of the whole or any part of the Province it may be either cancelled wholly or may be modified restricting the declaration to a specified part of the Province. The power to cancel or modify must be exercised in reference to the areas of the Province which it is competent for the Provincial

Government to specify as dangerously disturbed. The power to modify cannot obviously include the power to treat the same area as dangerously disturbed for persons accused of crimes committed in the past and not disturbed for others accused of the same or similar offences committed later. That clearly is a legislative function which is wholly outside the authority conferred on the delegate by s. 20 or s. 36(1). We must, therefore, hold that the third and the fourth notifications are invalid and as a result of the second notification the whole of the Province of Delhi ceased to be a dangerously disturbed area from October 1, 1950.

This position immediately raises the question about the validity of the proceedings continued against the appellant in the three cases pending against him under the summons procedure. So long as the State of Delhi was validly notified to be a dangerously disturbed area the adoption of the summons procedure was no doubt justified and its validity could not be impeached; but, with the cancellation of the relevant notification s. 36(1) of the Act ceased to apply and it was necessary that as from the stage at which the cases against the appellant then stood the warrant procedure should have been adopted; and since it has not been adopted the trial of the three cases is invalid and so the orders of conviction and sentence imposed against him are void. That in brief is the alternative contention raised before us by Mr. Ram Lal Anand.

Mr. Umrigar, urges that since the trial had validly commenced under the summons procedure, it was unnecessary to change the procedure after October 1, 1950, and his case is that the trial is not defective in any manner and the challenge to the validity of the impugned orders of conviction and sentence should not be upheld. In support of his argument Mr. Umrigar has invited our attention to some decisions which may now be considered. In *Srinivasachari* v. *The Queen* (1) the accused was tried by a Court of Sessions in December 1882 on charges some of which were triable by assessors and others by jury. Before the trial was concluded the Code of Criminal Procedure, 1882, came into force

(1) [1883] I.L.R. 6 Mad. 336.

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

and under s. 269 of the Code all the said charges became triable by jury. Section 558 of the Code had provided that the provisions of the new Code had to be applied, as far as may be, to all cases pending in any criminal court on January 1, 1883. The case against the accused which was pending on the date when the new Act came into force was submitted to the High Court for orders; and the High Court directed that by virtue of s. 6 of the General Clauses Act the trial must be conducted under the rules of procedure in force at the commencement of the trial. It is clear that the decision of the High Court was based both on the specific provisions of s. 558 which provided for the application of the new Code to pending cases only as far as may be and on the principles laid down in s. 6 of the General Clauses Act. That is why that decision cannot assist the respondent since s. 6 of the General Clauses Act is inapplicable in the present case.

The decision on *Mukund* v. *Ladu* (1) is also inapplicable for the same reasons. It was a case where one act was repealed by another and so the question as to the applicability of the provisions of the latter act had to be considered in the light of the provisions of s. 6 of the General Clauses Act. The judgment in terms does not refer to s. 6 but the decision is obviously based on the principles of the said section.

Then Mr. Umrigar relied on *Gardner* v. *Lucas* (2). In that case s. 39 of the Conveyancing (Scotland) Act, 1874, with which the court was dealing affected not only the procedure but also substantive rights; and so it was held that the said section was not retrospective in operation. This decision is wholly inapplicable and cannot give us any assistance in the present case.

Mr. Umrigar also placed strong reliance on a decision of the Full Bench of the Punjab High Court in *Ram Singh* v. *The Crown* (3). That decision does lend support to Mr. Umrigar's contention that the continuation of the trial under the summons procedure did not introduce any infirmity and was in fact appropriate

(1) [1901] 3 Bom. L.R. 584. (2) [1878] 3 A.C. 582.
(3) A.I.R. 1950 East Punjab 25.

and regular. The case against Ram Singh had been sent to the Court of Session under the provisions of s. 37 (1) of the Punjab Public Safety Act, 1948 (Punj. 2 of 1948) at a time when Ludhiana District was declared to be a dangerously disturbed area; before, however, the trial in the Court of Session actually commenced the District ceased to be a dangerously disturbed area. Even so, it was held that the Sessions Judge should continue with the trial under the provisions of s. 37 (1) of the Act and not under the ordinary provisions of the Code regarding sessions trial, and should follow the procedure prescribed for the trial of summons cases. It appears that the judgment in the case proceeded on the assumption that the principles enacted by s. 6 of the General Clauses Act were applicable, and so, since at the commencement of the proceedings the adoption of the summons procedure was justified under s. 37 (1) of the Act, the trial could continue under the same procedure even after the area had ceased to be a dangerously disturbed area. In our opinion, it is erroneous to apply by analogy the provisions of s. 6 of the General Clauses Act to cases governed by the provisions of a temporary Act when the said Act does not contain the appropriate saving section. Failure to recognise the difference between cases to which s. 6 of the General Clauses Act applies and those which are governed by the provisions of a temporary Act which does not contain the appropriate saving section has introduced an infirmity in the reasoning adopted in the judgment.

Besides, the learned judges, with respect, were in error in holding that the application of the ordinary criminal procedure was inadmissible or impossible after the area ceased to be dangerously disturbed. No doubt the learned judges recognised the fact that ordinarily the procedural law is retrospective in operation, but they thought that there were some good reasons against applying the ordinary procedural law to the case, and that is what influenced them in coming to the conclusion that the summons procedure had to be continued even after the area ceased to be dangerously disturbed. In this connection the learned

1959

Gopi Chand
v.
The Delhi Administration

Gajendragadkar J.

judges referred to the observation in Maxwell that "the general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it (1); and they also relied on the decision of the Privy Council in *Delhi Cloth and General Mills Co., Ltd.* v. *Income-tax Commissioner, Delhi* (2) in which their Lordships have referred with approval to their earlier statement of the law in the *Colonial Sugar Refining Co.* v. *Irving* (3) that "while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them". The learned judges took the view that these principles justified their conclusion that "where the provisions of a statute dealing with matters of procedure are inapplicable to a certain proceeding pending at the time the statute came into force, they must be regarded as textually inadmissible so far as those proceedings are concerned". We are disposed to think that this view is not sound. We do not think that the adoption of the ordinary warrant procedure was either inadmissible or inapplicable at the stage where the trial stood in the case against *Ram Singh* (4). It was wrong to assume that the sessions procedure would be inapplicable for the reason that the provisions of the Code in regard to the commitment of the case to the Court of Session had not been complied with. With respect, the learned judges failed to consider the fact that the procedure adopted in sending the case to the Court of Session under s. 37(1) of the relevant Act was valid and the only question which they had to decide was what procedure should be adopted after Ludhiana ceased to be a dangerously disturbed area. Besides, it was really not a case of retrospective operation of the procedural law; it was in fact a case where the ordinary procedure which had become inapplicable by the provisions of the temporary statute became applicable as soon as the area in question ceased to be dangerously disturbed.

(1) Maxwell on "Interpretation of Statutes", 9th Ed., p. 226.
(2) [1927] 9 Lah. 284. (3) [1905] A.C. 369.
(4) A.I.R. (1950) East Punjab 25.

In this connection it is relevant to refer to the decision of this Court in *Syed Qasim Razvi* v. *The State of Hyderabad* (1). In that case this Court was dealing with the regulation called the Special Tribunal Regulation (V of 1358 Fasli) which had been promulgated by the Military Governor of the Hyderabad State. The said regulation had provided that the Military Governor may, by general or special order, direct that any offence or class of offences should be tried by such tribunal, and the procedure for trial laid down by it differed from the provisions of the Hyderabad Criminal Procedure Code in several material particulars. The cases against the accused were directed to be tried by the Special Tribunal on October 6, 1949. The accused were convicted in September 1950 and their conviction on some of the charges was upheld by the High Court in appeal in April, 1951. The accused then appealed to this Court and also applied under Art. 32 of the Constitution for quashing the orders of conviction and sentence on the ground that the Special Tribunal Regulation became void on January 26, 1950, as its provisions contravened Arts. 14 and 21 of the Constitution which came into force on that date, and the continuation of the trial and conviction of the accused after that date was illegal. It is true that the final decision in the case, according to the majority view, proceeded on the footing that the accused had substantially the benefit of a normal trial though there were deviations in certain particulars and so his conviction could not be set aside merely because the Constitution of India came into force before the termination of the trial. As we will presently point out, the relevant facts in this case in regard to the deviation from the normal procedure are different from those in *Syed Qasim Razvi's case* (1), but that is another matter. What is important for our purpose is the view expressed by this Court that the regulation issued by the Military Governor of Hyderabad State could not be impeached and so the Special Tribunal must be deemed to have taken cognisance of

(1) [1953] S.C.R. 589.

1959

Gopi Chand v. The Delhi Administration

Gajendragadkar J.

the case quite properly and its proceedings up to the date of the coming in of the Constitution would also have to be regarded as valid. Dealing with this point, Mukherjea, J., who delivered the judgment of the Court, quoted with approval the observations made in *Lachmandas Kewalram Ahuja* v. *The State of Bombay* (1) that "as the Act was valid in its entirety before the date of the Constitution, that part of the proceedings before the Special Judge, which, up to that date had been regulated by the special procedure cannot be questioned". Unfortunately this aspect of the matter was not properly placed before the Full Bench of the Punjab High Court in the case of *Ram Singh* (2). If the learned judges had proceeded to deal with the question referred to them on the basis that the initial submission of the case to the Court of Session under s. 37(1) of the Act was valid they would not have come to the conclusion that the sessions procedure was inadmissible or inapplicable to the continuation of the case after Ludhiana had ceased to be a dangerously disturbed area. That is why we think that the view taken by the Full Bench is erroneous.

The position then is that as from October 1, 1950, the three cases against the appellant should have been tried according to the warrant procedure. It is clear that, at the stage where the trial stood on the material date, the whole of the prosecution evidence had not been led and so there was no difficulty in framing charges against the appellant in the respective cases and thereafter continuing the trial according to the warrant procedure. Having regard to the nature of the charges framed and the character and volume of evidence led, it is difficult to resist the appellant's argument that the failure to frame charges has led to prejudice; and it is not at all easy to accept the respondent's contention that the double opportunity to cross-examine the prosecution witnesses which is available to an accused person under the warrant procedure is not a matter of substantive and valuable benefit to him. The denial of this opportunity must,

(1) [1952] S.C.R. 710, 731. (2) A.I.R. 1950 East Punjab 25.

in the circumstances of the present cases, be held to have caused prejudice to him. We must accordingly hold that the continuation of the trial of the three cases against the appellant according to the summons procedure subsequent to October 1, 1950, has vitiated the trial and has rendered the final orders of conviction and sentence invalid. We must accordingly set aside the orders of conviction and sentence passed against the appellant in all the three cases.

That takes us to the question as to the final order which should be passed in the present appeals. The offences with which the appellant stands charged are of a very serious nature; and though it is true that he has had to undergo the ordeal of a trial and has suffered rigorous imprisonment for some time that would not justify his prayer that we should not order his retrial. In our opinion, having regard to the gravity of the offences charged against the appellant, the ends of justice require that we should direct that he should be tried for the said offences *de novo* according to law. We also direct that the proceedings to be taken against the appellant hereafter should be commenced without delay and should be disposed of as expeditiously as possible.

Appeal allowed.
Retrial ordered.

TIRUVENIBAI & ANOTHER

v.

SMT. LILABAI

1959

January 21.

(P. B. GAJENDRAGADKAR and M. HIDAYATULLAH, JJ.)

Registration—Contract to lease—Agreement not creating a present and immediate demise—Whether requires registration—"Agreement to lease", Meaning of—Indian Registration Act, 1908 (16 of 1908), s. 2(7).

A document purporting to be a receipt and bearing a four anna revenue stamp was executed by M in favour of the respondent and recited, inter alia, as follows: "I have this day given